THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24028 OF 2006

ORDER:

The Petitioners, who are five in number, claim to be the residents of Sidhout village and mandal. This writ petition is filed seeking a direction to respondents 1 and 2 to take necessary steps for shifting the 3rd respondent-shop from the existing place, on the ground that it is situated within the prohibited distance of 100 meters from Mandal Parishad Elementary School.

It is not in dispute that the 3rd respondent is holding a licence in Form A-4 under the provisions in terms of Rule 27 (1)(ii) of the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005, and as per Rule 27(1) (ii) of the said Rules, no shop can be located within 100 meters from an educational institution.

It is alleged by the petitioners that the Mandal Revenue Officer, Sidhout, having inspected the location of the 3rd respondent-shop and having got the distance measured between the premises in question and the Elementary School, found that it is located within the prohibited distance of 100 meters. Accordingly, he submitted a detailed report dated 13.10.2006. However, the 1st respondent failed to take any action to shift the 3rd respondent-shop. Hence, this writ petition.

A copy of the report of the Mandal Revenue Officer, Sidhout, dated 13.10.2006 placed before this Court shows that on the basis of the representation made by the petitioners requesting to shift the 3rd respondent-Shop from the premises bearing Door No.2/68, an enquiry was conducted on 10.10.2006, which revealed that the 3rd respondent has been carrying on the business from the back door of the building which is on Matham street side, which is a residential area. However, from the road point, the said

premises is within 87 meters from the Mandal Parishad Elementary School located on the main road of Sidhout. Accordingly, the Mandal Revenue Officer requested the 1st respondent- Prohibition and Excise Superintendent, Kadapa, to inspect the above shop and take necessary steps to avoid public inconvenience. The grievance of the petitioners is that in spite of the said report, respondents 1 and 2 failed to take any action.

Though no counter affidavit is filed by the respondents, the learned Government Pleader for Prohibition and Excise under instructions submitted that in pursuance of the complaint dated 17.7.2006 made by the petitioners herein, the 1st respondent directed an enquiry through the Station House Officer, Prohibition and Excise Station, Sidhout. Accordingly, Mandal Deputy Surveyor, Sidhout, in the presence of the Mandal Revenue Inspector, Sidhout, and the officials of the Prohibition and Excise, measured the distance from the entrance of the premises in question, which is facing towards West to the mid-point of the gate of the Mandal Parishad Elementary School and found that the same to be 106 meters. A report dated 27.2.2006 was submitted by the Station House Officer, Prohibition and Excise Station, Sidhout, to that effect which shows that the allegation of the petitioners that the 3rd respondent-Shop is situated within the prohibited distance is incorrect.

The learned Government Pleader has also placed before this Court a copy of the 'panchanama' dated 20.7.2006 along with the sketch to show that the distance between the Elementary School and the licensed premises is more than 100 meters.

A perusal of the said sketch makes it clear that the distance between the premises bearing Door No.2/68 and the Elementary School, if measured along the main road is only 78.8 meters. However, it appears that the entrance of the premises bearing Door No.2/68 is situated on the rear side of the premises, which can be reached by covering another 26.8 meters from the side of the

premises bearing Door No.2/68. If the said 26.8 meters is also taken into consideration, the distance exceeds 100 meters.

However, the report of the Mandal Revenue Officer, Sidhout, dated 17.10.2006 shows that though the entrance is situated on the rear side, for all practical purposes, the main road on which the School is situated, is being used by the customers who visit the shop in question. In the circumstances, the report dated 20.7.2006 produced by the learned Government Pleader cannot be taken as conclusive.

No reason is forthcoming as to why the report of the Mandal Revenue Officer, Sidhout, dated 13.10.2006, which was submitted after inspecting the premises in question and after making an enquiry in the locality, has not been taken into consideration by the 1st respondent. In the circumstances, I am of the opinion that the matter requires reconsideration.

Accordingly, the writ petition is disposed of with a direction to the first respondent to get the distance measured between the school and the premises in question, after due notice to the petitioners, in the presence of the Mandal Revenue Officer, Sidhout. Thereafter appropriate orders shall be passed in accordance with law after affording due opportunity to the 3rd respondent to explain the allegations made by the petitioners. Such exercise shall be completed as expeditiously as possible, preferably within a period of six weeks from the date of receipt of a copy of this order. No costs.

5th December, 2006. **(G. ROHINI).**
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24028 OF 2006

5th December, 2006.

Between:

A. Subbarayudu and others. .. Petitioners.

And

Prohibition and Excise Superintendent,
Kadapa, Kadapa district and others. .. Respondents.